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Attorney for Defendant
IHG Management (Maryland), LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARY PAMELA BROKATE, : 08 Civ. 4757 (SCR)

Plaintiff, : **ECF CASE**

- against - :

INTER-CONTINENTAL HOTELS : **ANSWER AND AFFIRMATIVE**
CORPORATION, HPT TRS IHG-2, INC. : **DEFENSES OF DEFENDANT**
and IHG MANAGEMENT (Maryland) : **IHG MANAGEMENT**
LLC, : **(MARYLAND), LLC TO**
: **FIRST AMENDED COMPLAINT**
Defendants.

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Defendant IHG Management (Maryland), LLC ("IHG Management"), by its attorney, Howard W. Burns, Jr., as and for its answer to the First Amended Complaint of Plaintiff Mary Pamela Brokate (the "Amended Complaint"), alleges as follows:

1. Upon information and belief, admits the allegations contained in Paragraph FIRST of the Amended Complaint.

2. Denies each and every allegation contained in Paragraph SECOND of the Amended Complaint, except admits that Inter-Continental Hotels Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware.

3. Admits the allegations contained in Paragraph THIRD of the Amended Complaint.

4. Admits the allegations contained in Paragraph FOURTH of the Amended Complaint.

5. Admits the allegations contained in Paragraph FIFTH of the Amended Complaint.

6. Denies each and every allegation contained in Paragraph SIXTH of the Amended Complaint, except admits that at all times relevant to the claims in this action, IHG Management managed the premises known as the "Crowne Plaza Hotel" located at 66 Hale Avenue, White Plains, New York 10601 (the "Premises").

7. Denies each and every allegation contained in Paragraph SEVENTH of the Amended Complaint, except admits that HPT

TRS IHG-2, Inc. owned the Premises and that IHG Management managed the Premises, at all times relevant to the claims in this action.

8. *Responding to Paragraph EIGHTH of the Amended Complaint, to the extent plaintiff's allegations constitute conclusions of law, IHG Management neither admits nor denies said allegations leaving all issues of law for determination by the Court. To the extent such legal conclusions require a response, IHG Management denies all of such legal conclusions. To the extent plaintiff's allegations constitute factual allegations, IHG Management admits that this proceeding is a "civil action;" that plaintiff claims damages in excess of \$75,000 exclusive of interest and costs, and that "diversity of citizenship" exists between plaintiff and defendants.*

9. *Responding to Paragraph NINTH of the Amended Complaint, to the extent plaintiff's allegations constitute conclusions of law, IHG Management neither admits nor denies said allegations leaving all issues of law for determination by the Court. To the extent such legal conclusions require a response, IHG Management denies all of such legal conclusions. To the extent plaintiff's allegations constitute factual allegations, IHG*

Management admits the allegations contained in Paragraph NINTH of the Amended Complaint.

10. In response to plaintiff's repeated and realleged allegations contained in Paragraph TENTH of the Amended Complaint, IHG Management repeats and realleges with the same force and effect as if set forth here at length, each admission, denial and other response of this Answer set forth above in Paragraphs 1 through 5 hereof, and further alleges:

11. Denies each and every allegation contained in Paragraph ELEVENTH of the Amended Complaint, except admits that at all times relevant to the claims in this action, the Premises was owned by HPT TRS IHG-2, Inc. and managed by IHG Management.

12. Responding to Paragraph TWELFTH of the Amended Complaint, to the extent plaintiff's allegations constitute conclusions of law, IHG Management neither admits nor denies said allegations leaving all issues of law for determination by the Court. To the extent such legal conclusions require a response, HPT TRS denies all of such legal conclusions. To the extent plaintiff's allegations constitute factual allegations, IHG Management denies

each and every allegation contained in Paragraph TWELFTH of the Amended Complaint.

13. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph THIRTEENTH of the Amended Complaint.

14. Responding to Paragraph FOURTEENTH of the Amended Complaint, to the extent plaintiff's allegations constitute conclusions of law, IHG Management neither admits nor denies said allegations leaving all issues of law for determination by the Court. To the extent such legal conclusions require a response, IHG Management denies all of such legal conclusions. To the extent plaintiff's allegations constitute factual allegations, IHG Management denies each and every allegation contained in Paragraph FOURTEENTH of the Amended Complaint.

15. Responding to Paragraph FIFTEENTH of the Amended Complaint, to the extent plaintiff's allegations constitute conclusions of law, IHG Management neither admits nor denies said allegations leaving all issues of law for determination by the Court. To the extent such legal conclusions require a response, IHG

Management denies all of such legal conclusions. To the extent plaintiff's allegations constitute factual allegations, IHG Management denies each and every allegation contained in Paragraph FIFTEENTH of the Amended Complaint.

16. Responding to Paragraph SIXTEENTH of the Amended Complaint, to the extent plaintiff's allegations constitute conclusions of law, IHG Management neither admits nor denies said allegations leaving all issues of law for determination by the Court. To the extent such legal conclusions require a response, IHG Management denies all of such legal conclusions. To the extent plaintiff's allegations constitute factual allegations, IHG Management denies each and every allegation contained in Paragraph SIXTEENTH of the Amended Complaint.

17. Denies each and every allegation contained in Paragraph SEVENTEENTH of the Amended Complaint.

18. Denies each and every allegation contained in Paragraph EIGHTEENTH of the Amended Complaint.

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

19. *The Amended Complaint fails to state any claim for relief as against IHG Management.*

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

20. *If plaintiff sustained any injuries or damage as alleged in the Amended Complaint, said injuries and damage were caused in whole or in part by her own negligence and were not caused or contributed to in any manner by any negligence of IHG Management or of anyone for whom IHG Management may be responsible.*

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

21. *The injuries and damage to plaintiff, if any, arose from certain risks, dangers and hazards, all of which were open, obvious and well-known to her at and before the time said injuries and damages were sustained, and all of said risks, dangers and hazards had been assumed by her.*

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

22. *If plaintiff sustained any injuries and damage as alleged in the Amended Complaint, said injuries and damage were caused in whole or in part by the neglect, breach of duty or other fault on the part of others for whose conduct IHG Management is not responsible.*

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

23. *Upon information and belief, any alleged injury and damage sustained by plaintiff was the result of intervening or superseding causes (or both) not of IHG Management's doing.*

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

24. *Upon information and belief, the injury and damage allegedly sustained by plaintiff was caused solely by the supervening conduct of a person or persons not named as a party to this lawsuit.*

**AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE**

25. Upon information and belief, any award made to plaintiff as a result of the injury and damage alleged in the Amended Complaint must be reduced in such proportion to the extent that the injury and damage complained of was caused, aggravated or contributed to by plaintiff's failure to mitigate her claimed damages.

**AS AND FOR AN EIGHTH
AFFIRMATIVE DEFENSE**

26. Upon information and belief, plaintiff failed to take reasonable steps to mitigate her claimed damage; IHG Management bears no responsibility for any damage which would otherwise have been avoided or prevented.

**AS AND FOR A NINTH
AFFIRMATIVE DEFENSE**

27. IHG Management asserts the limitations of liability set forth in Article 16 of the NY Civil Practice Law and Rules.

**AS AND FOR A TENTH
AFFIRMATIVE DEFENSE**

28. That if plaintiff has received remuneration and/or compensation for some or all of any claimed economic and other losses, or will with reasonable certainty receive remuneration and/or compensation for said losses in the future, IHG Management is entitled to have plaintiff's award, if any, reduced by the amount of said remuneration and/or compensation pursuant to Section 4545(c) of the Civil Practice Law and Rules.

**AS AND FOR AN ELEVENTH
AFFIRMATIVE DEFENSE**

29. IHG Management had no notice or knowledge of the condition alleged to have caused or contributed to the claimed incident.

WHEREFORE, Defendant IHG Management (Maryland), LLC demands judgment dismissing plaintiff's Amended Complaint with

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costs, disbursements and counsel fees, together with such other and further relief as this Court deems just, proper and equitable.

*Dated: New York, New York
August 25, 2008*

HOWARD W. BURNS, JR. (HWB 6529)

*Attorney for Defendant
IHG Management (Maryland), LLC*

s/Howard W. Burns, Jr.

Howard W. Burns, Jr. (HWB 6529)

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